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OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

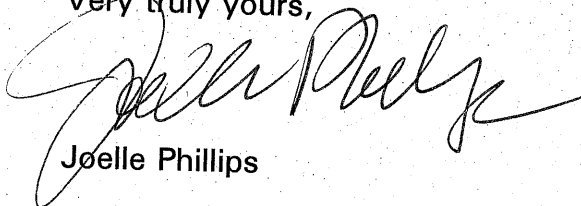
Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case
Proceeding to Declare Switching an Unrestricted Unbundled Network
Element*

Docket No. 02-00207

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to UNE-P Coalition's Motion to Compel Responses to First Data Requests. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Joelle Phillips

JP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element*

Docket No. 02-00207

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO UNE-P COALITION'S
MOTION TO COMPEL RESPONSES
TO FIRST DATA REQUESTS

BellSouth Telecommunications, Inc. ("BellSouth") responds to the motion to compel filed by Petitioners in this docket and respectfully shows the Authority as follows:

1. **BellSouth will produce information in response to Data Requests 1 and 3.**

As of the time BellSouth's objections to these data requests were required to be filed, BellSouth was unable to determine whether it actually maintained information responsive to the discovery requests, in the format sought by the discovery requests. As to data requests 1a and 1b, BellSouth has determined that it maintains the information in the format requested, and BellSouth will produce that information. With respect to the items sought in discovery request 3a, b, and c, BellSouth will produce the information that it maintains. BellSouth is unsure at this time whether it can produce the number of actual customers, as opposed to the number of customer accounts or the number of customer lines. BellSouth will produce the information that it retains.

2. **BellSouth's objection to the relevance of data requests 5 and 9 regarding the "BellSouth Connect and Grow" promotion should be sustained.**

As BellSouth has urged in this docket, the TRA has no authority to add, as a state-specific UNE, an element that was once declared to by the FCC to be a UNE, but that was

subsequently removed as UNE because it did not meet the federal statutory requirements. See BellSouth's Motion to Dismiss at 14-17. Even if the TRA had such authority, however, the Petitioners would be entitled to the relief they seek in this docket only if "the failure to provide access to [local switching on an unrestricted basis] would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." See 47 U.S.C. §251(d)(2)(B). As the United States Circuit Court of Appeals for the D.C. Circuit recently noted, the FCC has interpreted this statute to require unbundling if, "taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer." See *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 419 (D.C. Cir. 2002).¹

In determining whether CLECs are materially impaired without access to a given network element, the FCC requires the examination of five factors: cost, effect on timeliness of entry, quality, ubiquity, and impact on network operations. *Id.* The FCC also permits consideration of five additional factors, namely whether unbundling would: lead to rapid introduction of competition in all markets; promote facilities-based competition, investment, and innovation; reduce regulatory obligations; promote certainty in the market;

¹ According to section 251(d)(2), it is the FCC that first determines what network elements should be made available to the CLECs. A State commission may add UNEs to that list only if the State commission's decision "is consistent with the requirements of [section 251]," and only if the State commission's decision "does not substantially prevent implementation of the requirements of [section 251] and the purposes of [Part II of the Telecommunications Act of 1996]." *Id.* Even to the extent that state law may grant the TRA the authority to order BellSouth to unbundle network elements, therefore, the TRA could add UNEs only under the same circumstances and conditions as are binding on the FCC when it adds UNEs to the national list.

and be administratively practical. *Id.* Whether the Petitioners can prove these elements of the "impairment" showing is the issue in this docket.²

Items Nos. 5 through 9 ask a series of questions regarding a BellSouth retail service offering. Specifically, these questions ask about: "management approval" of that retail service offering; training materials and scripts related to that retail service offering; and the terms, conditions, and prices of that retail service offering. None of these questions have anything to do with:

how much it costs a CLEC to provide its own local switching or to obtain local switching from a third party;

how long it would take a CLEC that provided its own local switching or obtained it from a third party to enter the local market;

the quality of the service a CLEC could provide using its own local switching or using local switching it obtains from a third party;

the ubiquity of service a CLEC could provide using its own local switching or using local switching it obtains from a third party; or

any impact on network operations that may arise if a CLEC provides its own local switching or obtains it from a third party.

Nor do any of these questions have anything to do with whether an across-the-board unbundling requirement regarding local switching would or would not:

lead to rapid introduction of competition in all markets;

promote facilities-based competition, investment, and innovation;

reduce regulatory obligations;

promote certainty in the market; or

and be administratively practical.

² These are the elements that must be proven, that is, unless the FCC amends them as a result of the D.C. Circuit's reversal of the FCC's *UNE Remand Order*. In light of that reversal, the TRA should consider holding this docket in abeyance until the FCC addresses the D.C. Circuit's opinion on remand.

In other words, none of these questions is relevant to any issue that is before the TRA in this docket. Accordingly, the Petitioner's Motion to Compel must be denied.

3. **BellSouth will produce information in response to Request No. 10.**

While BellSouth interposed an objection to production of the information sought in data request 10, BellSouth will produce the information in its possession regarding the existence of CLEC switches. While BellSouth has firm grounds to believe that its information regarding CLEC switches is accurate, BellSouth also believes that other CLEC switches may exist regarding which BellSouth is unaware. In short, BellSouth is aware of the existence of other CLEC switches, but cannot be certain that it is aware of every existing CLEC switch. For that reason, BellSouth has itself instituted third party discovery requests to determine whether additional CLEC switches exist. With the above-described caveat, BellSouth will produce information in response to data request number 10.

4. **BellSouth will produce information in response to Data Requests 11-13.**

BellSouth withdraws its objections to data requests 11 through 13 and will produce information responsive to these requests.

5. **BellSouth's objection to data request 14 should be sustained unless the definition "churn rate" establishes relevance of the Data Request.**

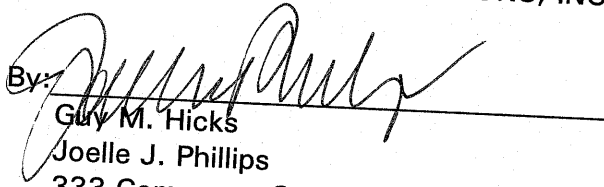
BellSouth has reviewed Petitioners' articulation of the relevance of its data request regarding churn rates. On the basis of Petitioners' argument, it is unclear to BellSouth what Petitioners mean by the term "churn rate" for purposes of their data request. In an attempt to resolve this objection, BellSouth has requested that Petitioners clarify the definition of churn rate for purposes of the discovery requests. Pending this clarification, BellSouth's objection should be sustained.

CONCLUSION

For the reasons stated above, and in BellSouth's objection, BellSouth respectfully submits that it should not be required to respond to those data requests as to which it maintains objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight
- ☐ Electronic

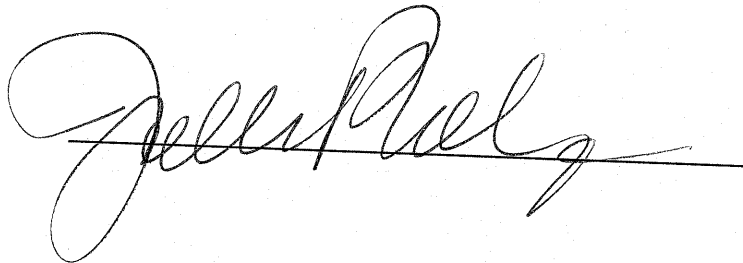
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A handwritten signature in cursive script, appearing to read "J. Paul", is written over a horizontal line.